69

No. (D)

Supreme Court, U.S.
FILED
07-497 OCT 9 - 2007
OFFICE OF THE CLERK

In The
Supreme Court of the United States

JASON ALLEN HULL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

Kevin T. Tipton
Counsel of Record
TIPTON LAW OFFICES
1001 Northpointe Plaza
Morgantown, West Virginia 26505
(304) 292-8478

Counsel for Petitioner

THE LEX GROUP^{DC} ♦ 1750 K Street N.W. ♦ Suite 475 ♦ Washington, DC 20006
(202) 955-0001 ♦ (800) 815-3791 ♦ Fax: (202) 955-0022 ♦ www.thelexgroupdc.com

QUESTION PRESENTED

Whether the Fourth Circuit erred in ruling that the search of the Defendant's home and the seizure of various items from said home was illegal under the Fourth Amendment.

PARTIES TO THE PROCEEDING

The following list identifies all parties appearing before this Court and before the United States Court of Appeals for the Fourth Circuit.

The Petitioner here and Appellant/Defendant below, Jason Allen Hull.

The Respondent here and the Appellee/Plaintiff below, United States of America.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 1

STATUTES INVOLVED 1

STATEMENT OF THE CASE 1

Factual Background 3

Procedural History 4

REASONS FOR GRANTING THE PETITION 6

1. THE FOURTH CIRCUIT'S DECISION TO AFFIRM THE DENIAL OF THE PETITIONER'S MOTION TO SUPPRESS WAS CLEARLY ERRONEOUS 6

a. The delay was unreasonable 7

b. The protective sweep was not justified 11

CONCLUSION 13

APPENDIX ..... ia

Opinion of the
United States Court of Appeals
For the Fourth Circuit
entered July 11, 2007 ..... 1a

U.S. CONST. amend IV 4a

18 U.S.C. § 2 ..... 4a

18 U.S.C. § 924 ..... 4a

21 U.S.C. § 841 ..... 7a

21 U.S.C. § 843 ..... 10a

21 U.S.C. § 846 ..... 11a

21 U.S.C. § 864 ..... 11a

TABLE OF AUTHORITIES

Page(s)

CASES

Chimel v. California,
395 U.S. 752, 89 S. Ct. 2034 (1969) 10

Maryland v. Buie,
494 U.S. 325 (1990) 11, 12

Payton v. New York,
445 U.S. 573, 100 S. Ct. 1371,
63 L. Ed. 2d 639 (1980)..... 13

Silverman v. United States,
365 U.S. 505, 81 S. Ct. 679,
5 L. Ed. 2d 734 (1961)..... 13

Taglavore v. U.S.,
291 F.2d 262 (9th Cir. 1961)..... 10, 11

U.S. v. Lefkowitz,
285 U.S. 452, 52 S. Ct. 420 (1932) 10

U.S. v. Lovasco,
431 U.S. 783, 97 S. Ct. 2044 (1977) 7

U.S. v. Payne,
423 F.2d 1125 (4th Cir. 1970)..... 8, 9

U.S. v. United States District Court,
407 U.S. 297, 92 S. Ct. 2125,
32 L. Ed. 2d 752 (1972)..... 13

U.S. v. Watson,
423 U.S. 411, 96 S. Ct. 820 (1976) 7

U.S. v. Weaver,
384 F.2d 879 (4th Cir. 1967).....7, 8, 9

U.S. v. Wilhelm,
80 F.3d 116 (4th Cir. 1996).....13

CONSTITUTIONAL PROVISION

U.S. CONST. amend IV ..... passim

STATUTES

18 U.S.C. § 2 1

18 U.S.C. § 924 1

21 U.S.C. § 841 1

21 U.S.C. § 843 1

21 U.S.C. § 846 1

21 U.S.C. § 864 1

28 U.S.C. § 1254 1

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit was an unpublished, per curiam opinion decided on July 11, 2007, and is reprinted in the Appendix to this Petition at 1. The opinion of the United States District Court for the Northern District of West Virginia was unpublished and is reprinted in the Appendix to this Petition at App. 1a.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit entered its judgment on July 11, 2007. This Court has jurisdiction under 28 U.S.C. § 1254.

STATUTES INVOLVED

This case involves U.S. Const. Amend IV. (App. 4a) The Petitioner was originally charged in district court with violations of 21 U.S.C. §§ 846, 841, 864, 843, 18 U.S.C. § 924 and 18 U.S.C. § 2. (App. 4a-11a)

STATEMENT OF THE CASE

Without this Court's intervention, the Fourth Amendment, designed to protect all United States citizens from unreasonable search and seizure, will be rendered a farce and the very fabric of our constitution will suffer a rip that may never be mended.

On March 3, 2005, Trooper Scarbro of the West Virginia State Police obtained a misdemeanor arrest warrant for the Defendant for the misdemeanor offense of contributing to the delinquency of a minor. The offense was allegedly committed on or about February 26, 2005. However, Trooper Scarbro waited nearly two months until April 28, 2005, to execute the misdemeanor arrest warrant, despite the fact that the warrant directed the officer to execute it "forthwith."

The Petitioner's home is located approximately seven (7) minutes from the State Police station. The Trooper offered no reason for the delay in executing the warrant except that he simply put the warrant "on the backburner" because he had other more serious crimes to investigate and handle and that he "just happened to have the time" on April 28, 2005.

On April 28, 2005, when he finally decided to execute the warrant, Trooper Scarbro, a highly experienced state trooper, took two deputy sheriffs with him to execute the misdemeanor arrest warrant. Moments after arriving at the Petitioner's home, he was immediately met by the Petitioner at the front door at which time he as instantly placed under arrest without incident. The Petitioner was immediately taken off of his porch, well into the driveway and handcuffed. As he was being escorted off his porch, the two deputies immediately went into the Petitioner's home, without a warrant, at which time a number of items were discovered.

After looking around in the Petitioner's home, the police then sought a search warrant from the local magistrate, at which time they "searched" the home and seized a number of items.

Trooper Scarbro testified that he had received tips from people about the Petitioner "for about a year" prior to arresting him and searching his home.

Finally, the misdemeanor arrest warrant at issue in this matter was dismissed by the State of West Virginia. It was never pursued or prosecuted.

The Fourth Amendment guarantees the right of the people to be secure in their homes against unreasonable searches and seizures. However, actions such as the ones in the case are threatening this very premise and chipping away at the very freedoms we were guaranteed by our founding fathers. This is precisely why this case requires immediate review by this Court.

Factual Background

1. On or about March 3, 2005, an arrest warrant was issued Upshur County Magistrate Court directing the Petitioner to be arrested "forthwith" for the offense of contributing to the delinquency of a minor.

2. On April 28, 2005, Trooper Scarbro, of the West Virginia State Police, took two sheriffs deputies with him and executed the arrest warrant at the Petitioner's home which was

located seven (7) minutes away from the Trooper's station.

3. Upon their arrival, the Petitioner met the Trooper at the front door and was immediately taken into police custody. He was taken off the porch and handcuffed several feet from his home.

4. As the Petitioner was being led off his porch into the driveway, the two sheriffs deputies passed them and immediately entered the Petitioner's home without a search warrant of any kind.

5. Upon information and belief, the two deputies looked throughout the Petitioner's home prior to coming back out. There were a number of people in the home, one of which was arrested. However, he was later dismissed from the proceedings for lack of evidence.

6. After looking through the Petitioner's home, the deputies then obtained a search warrant, pursuant to which a number of items of evidence was obtained incriminating the Petitioner.

Procedural History

On August 17, 2005, the Petitioner was named in a five count indictment, charging him with conspiracy to distribute methamphetamine, one count; aiding and abetting the attempted manufacturing of methamphetamine, one count;

possession of pseudoephedrine with intent to manufacture methamphetamine, one count; and possession of firearm in furtherance of a drug crime, one count. On or about October 11, 2005, a suppression hearing was conducted at which the Petitioner moved for the suppression of various items of evidence based upon the contention that the search of his home was illegal. On or about October 19, 2005, the federal magistrate judge entered a Report and Recommendation denying the Appellant's motion to suppress. On or about October 28, 2005, Appellant timely filed his objections to the report and recommendation. On or about November 9, 2005, the district court entered an Order adopting the report and recommendation.

On or about February 27, 2006, the Appellant entered a conditional plea to Count I of the Indictment, Conspiracy, under which he was allowed to appeal the Court's adverse decision relative to his motion to suppress. He was ultimately sentenced on October 25, 2006, whereat the Appellant was sentenced to 87 months incarceration.

The Petitioner filed his timely appeal with the United States Court of Appeals for the Fourth Circuit and said appeal was denied on or about July 11, 2007. The Fourth Circuit found that the 56 day delay between the issuance and the execution of the misdemeanor arrest warrant was not unreasonable and that the officers were justified under the circumstances of this case in entering the Petitioner's house after his arrest, to conduct a protective sweep.

REASONS FOR GRANTING THE PETITION

The Fourth Circuit's decision illustrates the very decay of the fundamental rights granted to us by the Constitution. The facts, taken as whole, clearly indicate that the officers in this case sat on what appears to be a pretextual misdemeanor arrest warrant and picked what they deemed to be the perfect time to execute the warrant and search the Petitioner's home under the guise of a "protective sweep." Obviously, this is the very conduct our Constitution and decades of caselaw was meant to discourage and prevent. However, to this point, the police have gotten by with it and it is imperative that this Court step in and right the ship and protect the Petitioner's Fourth Amendment rights.

I. THE FOURTH CIRCUIT'S DECISION TO AFFIRM THE DENIAL OF THE PETITIONER'S MOTION TO SUPPRESS WAS CLEARLY ERRONEOUS.

The Fourth Amendment succinctly states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing

> the place to be searched,
> and the persons or things
> to be seized.

These few short sentences have rang true for hundreds of years and establish the very backbone upon which our criminal justice system is built. They are meant to protect us from rogue searches and police officers who would rather f ıd – or create – loopholes than to follow the law of the land. Fortunately for the Petitioner, however, there is a system of checks and balances.

a. The delay was unreasonable.

Generally, delaying the arrest usually poses no problem under speedy trial or due process considerations. See U.S. v. Lovasco, 431 U.S. 783, 97 S. Ct. 2044 (1977); see also U.S. v. Watson, 423 U.S. 411, 451, 96 S. Ct. 820, 841 (1976)(holding that "[d]elay by law enforcement officers in executing an arrest warrant does not ordinarily affect the legality of the arrest.)

However, there are exceptions to this general rule. One specific exception is emphasized in U.S. v. Weaver, wherein the Fourth Circuit held that "[p]olice officials are required to use diligence in execution of arrest warrants" and **"may not hold one unexecuted in hope that they may ultimately find the defendant in a house or other building which they would like to search** but which they could not lawfully search except as incident to lawful arrest." 384 F.2d 879, 880-881 (4th Cir. 1967)(emphasis added).

In Weaver, the Defendant's whereabouts were unknown for sixteen (16) days and he was ultimately found in an airport after the police were given a tip. The Court found that the sixteen day delay in executing the warrant was not unreasonable given that the police did not know where the Defendant was.

Moreover, the Fourth Circuit cited the Weaver decision as well as United States v. Payne, 423 F.2d 1125 (4th Cir. 1970) as supporting law for its decision to affirm the lower court's ruling that the delay was reasonable.

Petitioner has already pointed out the poignant differences between the facts in Weaver and those in the case at bar. As for Payne, two days prior to be arrested, an arrest warrant had been issued for the defendant, based upon an earlier sale of narcotics to an undercover policewoman. The undercover agent also reported to federal officers that she had been told by the defendant that she would take heroin to a prisoner in Lorton Reformatory on Sunday. Payne, 423 F.2d at 1125. The defendant contended that the officers should have executed, or attempted to execute, the arrest warrant on Saturday, their usual day off, and that it was impermissible for them to wait until Sunday when they had reason to believe the defendant would be engaged in the commission of another offense.

The Fourth Circuit held that:

> "The duty to attempt with reasonable promptness to execute such warrants, cannot be so closely confined or strictly applied. The exercise of reasonable diligence without undue delay does not inexorably call for absolute immediacy. Within reasonable limits of time and place, the officers charged with the execution of an arrest warrant are entitled to consider their other duties, work schedules and convenience." *Id.*

Obviously, the case at bar is completely different from both Weaver and Payne. Here, the trooper knew exactly where the Defendant was at all times and there is absolutely no evidence that he had a difficult time trying to find him. In fact, by the trooper's own admission, the Petitioner's home was only seven short minutes away. Regardless, it took the police nearly two months to execute the misdemeanor arrest warrant on the Petitioner.

During the suppression hearing, Trooper Scarbro testified that he had received a number of tips about the Petitioner's drug activity and that he had been receiving those tips for approximately a

year. In fact, Trooper essentially admitted that this was why he chose to execute the warrant when he did. Given this admission by Trooper Scarbro, coupled with the fact that he took two sheriff's deputies with him to execute the warrant, there is absolutely no question that he was waiting for the "right time" to execute the warrant so that they could search the appellant's home "pursuant to his arrest." Finally, if we add in the fact that the misdemeanor warrant was ultimately dismissed by the State of West Virginia and never prosecuted, it is clear that the arrest warrant was a sham and used as a pretext to search the Defendant's home for evidence and this is a clear violation of the Defendant's Fourth Amendment rights. See U.S. v. Lefkowitz, 285 U.S. 452, 467, 52 S. Ct. 420, 424 (1932); see also Taglavore v. U.S., 291 F.2d 262, 265 (9th Cir. 1961)(holding that where the arrest is only a sham or front being used as an excuse for making a search, the arrest itself and the ensuing search are illegal); see also Chimel v. California, 395 U.S. 752, 767, 89 S. Ct. 2034, 2042 (1969).

As the Taglavore Court held:

> "[T]he violation of a constitutional right by a subterfuge cannot be justified, and the circumstances of this case leave no other inference than that this is what was done with the [misdemeanor] warrant here. **Were the use of**

> **misdemeanor arrest warrants as a pretext for searching people suspected of felonies to be permitted, a mockery could be made of the Fourth Amendment and its guarantees. The courts must be vigilant to detect and prevent such a misuse of legal processes.**" Id., at 266 (emphasis added).

It's almost as if the Taglavore Court could see this case coming and this matter fits neatly within the four corners of that decision.

b. The protective sweep was not justified.

According to Maryland v. Buie, 494 U.S. 325, 327 (1990), "[a] 'protective sweep' is a **quick and limited search** of premises, incident to an arrest and **conducted to protect the safety of police officers** or others. It is **narrowly confined to a cursory visual inspection of those places in which a person might be hiding.**" (Emphasis added). Hence, the question is whether "the area swept harbored an individual posing a danger to the officer or others." *Id.*

As noted, in the instant case, three police officers appeared at the Petitioner's door step to

execute an misdemeanor arrest warrant on the Petitioner, fifty six days after the warrant was issued. Despite the fact that the Petitioner instantly surrendered himself to the police without any incident whatsoever, two of the officers, *within ten seconds*, according to Trooper Scarbro, barged into his home under the guise of a "protective sweep." In its unpublished, per curiam opinion, the Fourth Circuit found no error in the district court's determination that the delay in execution of the warrant was reasonable and that the protective sweep was justified citing the Maryland v. Buie case.

Here, again, the Petitioner was taken several feet away from his home, in handcuffs. He posed absolutely no threat to the officers. While there were people inside the Petitioner's home, they were not being disruptive or belligerent in any way.

Supposedly, the reason why the police were at the Petitioner's home was to execute a misdemeanor arrest warrant and it went off without a hitch. However, the officers saw fit to walk through the front door of the Petitioner's home and search it. Said search was not "quick and limited" and was not even remotely necessary to "protect the safety of the officers." They could have simply put the Petitioner in the cruiser and left the area. If they suspected other criminal activity, which they did even before they went to the Petitioner's home, they could have easily obtained a search warrant based upon what they saw, heard or smelled, and there would never have been an issue. However, they took it upon themselves to go that extra, ill-advised mile, and

they effectively and callously trampled the Petitioner's constitutional rights in the process.

CONCLUSION

The caselaw in this area is endless but the same premise holds true. "The right to privacy in one's home is a most important interest protected by the Fourth Amendment and a continuing theme in constitutional jurisprudence." U.S. v. Wilhelm, 80 F.3d 116 (4th Cir. 1996). "Physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." Payton v. New York, 445 U.S. 573, 585, 100 S. Ct. 1371, 1379, 63 L. Ed. 2d 639 (1980) quoting U.S. v. United States District Court, 407 U.S. 297, 313, 92 S. Ct. 2125, 2135, 32 L. Ed. 2d 752 (1972). "At the very core [of the Fourth Amendment] stands the right of a man to retreat into his home and there be free from unreasonable government intrusion." Silverman v. United States, 365 U.S. 505, 511, 81 S. Ct. 679, 682, 5 L. Ed. 2d 734 (1961).

In sum, considering all the facts, it is clear in this case that the misdemeanor arrest warrant was simply a means to an end, and, once the true objective was met, the misdemeanor was thrown to the curb. Moreover, there was no need for a protective sweep of the Petitioner's home because there was absolutely no risk posed to the officers. Given such, the Petitioner's arrest and the subsequent search of his home should be deemed illegal and the evidence of that search suppressed.

For these reasons, this Court should grant this petition for *certiorari.*

Kevin T. Tipton
Counsel of Record
TIPTON LAW OFFICES
1001 Northpointe Plaza
Morgantown, WV 26505
304-292-8478 (office)

TABLE OF CONTENTS
APPENDIX TO PETITION

Page

Opinion of the
United States Court of Appeals
For the Fourth Circuit
entered July 11, 2007 ..... 1a

U.S. CONST. amend IV 4a

18 U.S.C. § 2 ..... 4a

18 U.S.C. § 924 ..... 4a

21 U.S.C. § 841 ..... 7a

21 U.S.C. § 843 ..... 10a

21 U.S.C. § 846 ..... 11a

21 U.S.C. § 864 ..... 11a

[ENTERED: JULY 11, 2007]

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-5121

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JASON ALLEN HULL,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Elkins. Robert E. Maxwell, Senior District Judge. (2:05-cr-00037-REM-2)

Submitted: June 13, 2007
Decided: July 11, 2007

Before WILKINSON, KING, and GREGORY, Circuit Judges.

Affirmed in part; dismissed in part by unpublished per curiam opinion.

Kevin T. Tipton, TIPTON LAW OFFICES, PLLC, Morgantown, West Virginia, for Appellant. Sharon

L. Potter, United States Attorney, Wheeling, West Virginia; Stephen D. Warner, Assistant United States Attorney, Elkins, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jason Allen Hull entered a conditional plea of guilty to conspiracy to manufacture and distribute methamphetamine. He reserved his right to appeal from the district court's denial of his motion to suppress evidence seized from his residence, and, with some exceptions, he waived his right to appeal his sentence. On appeal, Hull argues that the district court erred in finding that the delay in executing a misdemeanor arrest warrant was not unreasonable and was not a pretext for an unlawful search of his residence. He also contends that the officers had no justification for a protective sweep of the interior of his home when he was arrested outside his home. Lastly, Hull challenges the applicability of an enhancement to his sentence.

To the extent that Hull seeks to challenge his sentence, we dismiss that portion of the appeal based on Hull's waiver of the right to appeal in his plea agreement. Except as to issues concerning the suppression motion, Hull agreed that if the base offense level was twenty-six or lower, he waived the right to appeal his sentence or the manner in which the sentence was determined. The validity of this waiver is not challenged on appeal, and the sentencing issue falls squarely within the scope of

the waiver. Thus, Hull has waived his right to challenge his sentence, and we dismiss this portion of the appeal.

Hull also challenges the district court's determination that the fifty-six-day delay between the issuance and the execution of the misdemeanor arrest warrant was not unreasonable and that the officers were justified under the circumstances of this case in entering Hull's house after his arrest outside the house, to conduct a protective sweep. We have reviewed the parties' briefs and joint appendix and find no error in the district court's determination that the delay in execution of the warrant was not unreasonable and that the protective sweep was justified. See Maryland v. Buie, 494 U.S. 325, 334 (1990); United States v. Payne, 423 F.2d 1125, 1125-26 (4th Cir. 1970); United States v. Weaver, 384 F.2d 879, 880 (4th Cir. 1967). Accordingly, we affirm the denial of the motion to suppress and thus affirm Hull's conviction for the reasons stated by the district court. See United States v. Hull, No. 2:05-cr-00037-REM-2 (N.D.W. Va. dated Nov. 9, 2005; entered Nov. 11, 2005). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART;
DISMISSED IN PART

U.S. Const. amend IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized

18 U.S.C. § 2 Principals

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. § 924 Penalties
(c)
(1)
(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm,

shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(d)

(1) Any firearm or ammunition involved in or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922 (l), or knowing violation of section 924, or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: Provided, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or

ammunition shall be commenced within one hundred and twenty days of such seizure.

(2)

(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

(D) The United States shall be liable for attorneys' fees under this paragraph only to the extent provided in advance by appropriation Acts.

(3) The offenses referred to in paragraphs (1) and (2)(C) of this subsection are—

(A) any crime of violence, as that term is defined in section 924 (c)(3) of this title;

(B) any offense punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the

Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

(C) any offense described in section 922 (a)(1), 922 (a)(3), 922 (a)(5), or 922 (b)(3) of this title, where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922 (a)(1), 922 (a)(3), 922 (a)(5), or 922 (b)(3) of this title;

(D) any offense described in section 922 (d) of this title where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

(E) any offense described in section 922 (i), 922 (j), 922 (l), 922 (n), or 924 (b) of this title; and

(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition.

21 U.S.C. § 841. Prohibited acts A

(a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(b) Penalties

Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)

(B) In the case of a violation of subsection (a) of this section involving—

(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;
(ii) 500 grams or more of a mixture or substance containing a detectable amount of—
(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;
(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);
(iii) 5 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;
(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);
(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);
(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N- [1-(2-phenylethyl) -4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;
(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or

(viii) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or

suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(c) Offenses involving listed chemicals

Any person who knowingly or intentionally—

(1) possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this subchapter;

21 U.S.C. 843 Penalties

(d)(1) Except as provided in paragraph (2), any person who violates this section shall be sentenced to a term of imprisonment of not more than 4 years, a fine of not more than $30,000, or both; except that if any person commits such a violation after one or more prior convictions of him for violation of this section, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 8 years, a fine of not more than $60,000, or both.

(2) Any person who, with the intent to manufacture or to facilitate the manufacture of methamphetamine, violates paragraph (6) or (7) of subsection (a), shall be sentenced to a term of imprisonment of not more than 10 years, a fine of not more than $30,000, or both; except that if any person commits such a violation after one or more prior convictions of that person--

(A) for a violation of paragraph (6) or (7) of subsection (a); (B) for a felony under any other

provision of this subchapter or subchapter II of this chapter; or
(C) under any other law of the United States or any State relating to controlled substances or listed chemicals, has become final, such person shall be sentenced to a term of imprisonment of not more than 20 years, a fine of not more than $60,000, or both.

21 U.S.C. § 846. Attempt and conspiracy
Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy

21 U.S.C. § 864. Anhydrous ammonia
(a) It is unlawful for any person—
(1) to steal anhydrous ammonia, or